

MERCHANT MARINE ACT, 1928

SEC. 1. DECLARATION OF POLICY. (46 App. U.S.C. 891 (2001)). The policy and primary purpose declared in section 1 of Merchant Marine Act, 1920 (U. S. C., Title 46, App. 861) are hereby confirmed.

SEC. 202. VESSELS OF SECRETARY; REMODELING AND IMPROVING. (46 App. U.S.C. 891b (2001)). In addition to his power to recondition and repair vessels under section 12 of the Merchant Marine Act, 1920 as amended (U. S. C., Title 46, App. 871), the Secretary of Transportation may remodel and improve vessels owned by the United States and in its possession or under his control, so as to equip them adequately for competition in the foreign trade of the United States. Any vessel so remodeled or improved shall be documented under the laws of the United States and shall remain documented under such laws for not less than five years from the date of the completion of the remodeling or improving and so long as there remains due the United States any money or interest on account of such vessel, and during such period it shall be operated only on voyages which are not exclusively coastwise.

SEC. 203. REPLACEMENT VESSELS. (46 App. U.S.C. 891c (2001)). The necessity for the replacement of vessels owned by the United States and in the possession or under the control of the Secretary of Transportation and the construction for the board of additional up-to-date cargo, combination cargo and passenger, and passenger ships, to give the United States an adequate merchant marine, is hereby recognized, and the Secretary of Transportation is authorized and directed to present to Congress from time to time, recommendations setting forth what new vessels are required for permanent operation under the United States flag in foreign trade, and the estimated cost thereof, to the end that Congress may, from time to time, make provision for replacements and additions. All vessels built for the Secretary of Transportation shall be built in the United States, and they shall be planned with reference to their possible usefulness as auxiliaries to the naval and military services of the United States.

SEC. 703. DEFINITIONS. (46 App. U.S.C. 891u (2001)).

(a) When used in this Act, and for the purposes of this Act only, the words "foreign trade" mean trade between the United States, its Territories or possessions, or the District of Columbia and a foreign country: Provided, however, That the loading or the unloading of cargo, mail, or passengers at any port in any Territory or possession of the

CARGO RESERVATION¹

MILITARY CARGO PREFERENCE ACT OF 1904.² (10 U.S.C. 2631 (2001)).

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

(2) In paragraph (1), the term “reflagging or repair work” means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

¹ Note the Cargo Preference vessel restrictions set forth in 46 U.S.C. 2302(e), page 275 infra.

² See also 10 U.S.C. 2631a, added by section 1173(a) of Public Law 103-160, approved November 30, 1993, providing:

10 U.S.C. 2631a (2001. Contingency Planning: Sealift and Related International Transportation Requirements.

(a) **Consideration of Private Capabilities.** The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) **Private Capacities Presentations.** The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

**PUBLIC RESOLUTION 17.³ SHIPMENT OF EXPORTS
FINANCED BY GOVERNMENT IN UNITED STATES
VESSELS (46 App. U.S.C. 1241-1) (2001)).**

It is the sense of Congress that in any loans made by the Reconstruction Finance Corporation or any other instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the Reconstruction Finance Corporation or any other instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

**CARGO PREFERENCE ACT OF 1954-PUBLIC LAW 664.
SECTION 901(b) OF THE MERCHANT MARINE ACT,
1936 (46 App. U.S.C. 1241(b) (2001)).**

**(b) Cargoes Procured, Furnished or Financed by United States;
Waiver in Emergencies; Exceptions; Definition.**

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public

³ Public Resolution 17-73rd Congress, approved March 26, 1934, (48 STAT. 500), as amended by Public Law 97-31, approved August 6, 1981 (92 STAT. 165).

Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.

FOOD SECURITY ACT OF 1985. PUBLIC LAW 99 -198, as amended (46 App. U.S.C. 1241e - 1241o (2001)).

See sections 901a through 901k of the Merchant Marine Act, 1936, commencing at page 110, *supra*.

EXPORT OF ALASKAN NORTH SLOPE OIL.⁴

SEC. 201—EXPORTS OF ALASKAN NORTH SLOPE OIL, amends section 28 of the Mineral Leasing Act (30 U.S.C. 185), by amending subsection (s) to read as follows:

EXPORTS OF ALASKAN NORTH SLOPE OIL

(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision

⁴ Set forth in Title II of Public Law 104-58, approved November 28, 1995 (109 STAT. 557, 560), the Alaska Power Administration Asset Sale and Termination Act.

of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).⁵

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination,

⁵ Section 2 of the Shipping Act, 1916 (followed by provisions that affect Section 2 citizenship requirements), is located at page 182, *supra*.

including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

SEC. 202. GAO REPORT.

(a) **Review.**—The Comptroller General of the United States shall conduct a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii. The Comptroller General shall commence this review three years after the date of enactment of this Act and, within twelve months after commencing the review, shall provide a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources and the Committee on Commerce of the House of Representatives.

(b) **Contents of Report.**—The report shall contain a statement of the principal findings of the review and recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that the Comptroller General attributes to Alaska North Slope oil exports.

46 U.S.C. 2302 (2001). PENALTIES FOR SUBSTANDARD OPERATIONS.⁶

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(e)(1) A vessel may not transport Government-impelled cargoes if—

(A) the vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to

⁶46 U.S.C. 2302(e) was added by Section 408(a) of Public Law 105 - 383, approved November 13, 1998 (112 STAT. 3411, 3430), the Coast Guard Authorization Act of 1988. Subsection (b) provides that it shall take effect on January 1, 1999.

which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or

(B) the operator of the vessel has on more than one occasion had a vessel detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel.

(2) The prohibition in paragraph (1) expires for a vessel on the earlier of—

(A) 1 year after the date of the publication in electronic form on which the prohibition is based; or

(B) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the detention is based.

(3) As used in this subsection, the term "Government-impelled cargo" means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.